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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-434

WILLIAM G. MILLIKEN, *et al.*,

Petitioners,

vs.

RONALD G. BRADLEY, *et al.*

No. 73-435

ALLEN PARK PUBLIC SCHOOLS, *et al.*,

Petitioners,

vs.

RONALD G. BRADLEY, *et al.*

No. 73-436

THE GROSSE POINTE PUBLIC SCHOOL SYSTEM, *et al.*,

Petitioners,

vs.

RONALD G. BRADLEY, *et al.*

MEMORANDUM IN OPPOSITION TO PETITIONS FOR WRITS OF CERTIORARI

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As set forth hereafter, respondents Bradley, et al. (plaintiffs in this cause), submit that this school segregation case

is not in an appropriate posture for Supreme Court review.[1]

Basically, the petitioners seek review of interlocutory remedial orders in advance of the framing and adoption of a remedial plan and evidentiary hearings in the trial court. No actual plan of desegregation has been approved or even considered by the courts below; no defendant has been ordered to do anything except to participate fully in planning and to join in the hearing in the district court. The Court of Appeals has affirmed the findings of constitutional violation and of inadequacy of relief limited to the Detroit school system, directed that plaintiffs amend their complaint to conform to the evidence, required joinder of any school district potentially affected by any plan, and ordered that a full hearing on remedy be held and that the Legislature of the State of Michigan be given an opportunity to act before any plan of desegregation is devised and approved by the district court.

Proceedings are underway in the district court in compliance with these directions. The court has ordered that school districts (and the chief school officials of districts) which may possibly be affected by any plans eventually adopted, be joined as parties defendant so that they may be heard. Plaintiffs have filed an amended complaint to conform to the evidence and seeking full relief; the opinion of the Court of Appeals has been formally transmitted by the petitioner Attorney General to the Michigan Legislature for its consideration.

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[1] We have chosen not to submit a lengthy Brief in Opposition to Certiorari correcting petitioners' various omissions of fact and mischaracterizations. In our view, the real issues, if any remain, will appear only after the actions and hearings directed by the Court of Appeals are concluded, and a decision has been rendered by the district court and reviewed by the Court of Appeals.

In such circumstances, this court cannot properly consider the very issues which are essential to review in a case like this. As yet, there are no plans, nor hearing on remedy, nor findings and conclusions thereon by the district court, nor review of any remedial orders by the Court of Appeals. This Court is in no position to evaluate the practicalities of the local situation, the constitutional effectiveness of alternative plans of remedy, the extent and form of the remedy, the extent of transportation and administrative reorganization required, and the precise manner in which school district boundaries need be permeated for the limited purpose of accomplishing complete relief.

Petitioners, and all other school districts which may be affected by any plan, as well as all other parties to this litigation, and the Michigan state officials, now have the opportunity in the courts below to present evidence and argument which will shape a complete record in this cause.[2]

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[2] In remanding this case the Court of Appeals directed the district court to afford to "any party against whom relief is sought, including school districts which heretofore have intervened and school districts which hereafter may become parties . . . an opportunity to offer additional evidence, and to cross-examine available witnesses who previously have testified, on any issue raised by the pleadings, including amendments thereto, as may be relevant and admissible to such issues." This direction is in accord with the traditional legal principles under which federal courts have always afforded parties litigant an opportunity to be heard upon a proper showing of the relevance and admissibility of evidence. *Cf. Kelley* v. *Metropolitan County Bd. of Educ.*, 463 F.2d 732, 745-46 (6th Cir.), *cert. denied*, 409 U.S. 1001 (1972). We respectfully suggest that the district court should and will allow the added defendants to develop all relevant evidence necessary for decision and determination of the issues both of violation and of remedy. Petitioners correctly note that the Court of Appeals held that the district court "need not" consider evidence with respect to constitutional violation. However, the Court did not direct the district court to *refuse* to consider such evidence if offered. We believe that petitioners and others added as parties may, upon a proper showing, present evidence on this issue; but in light of this Court's decision in *Keyes* v. *School Dist. No. 1, Denver*, —— U.S. —— (1973), and

No one can foretell what contested issues will thereafter remain among the parties, nor what record evidence will define those issues.[3] It may well be that after the hearings in the district court, the form, scope and indeed the source of the remedy would be markedly different from that described in the petitions.[4] Under these circumstances, decision of the issues presented in the petitions at this stage of the proceedings would virtually require an advisory opinion. Judicial economy and the established practice of this Court require that the district court decide, and the Court of Appeals review, these issues based on the relevant evidence presented by all of the parties, prior to this Court's review.

There is no reason to depart from this Court's established practice of refusing to review school segregation cases in

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of the evidence already introduced documenting the use by Detroit and Michigan school officials of virtually all of the classic segregating techniques which have been identified by this and other Courts, and since petitioners lack the power to rewrite history, the district court's findings of violation seem likely to be reaffirmed. To date, the original intervening school districts have never suggested what evidence they can or would present on this issue.

[3] The district court will of course consider the evidence already introduced in this record at the lengthy trial; similarly, it will evaluate any other evidence to be presented by the parties which might lead it to modify, amend or supplement its original rulings. New evidence concerning the practicality and efficacy of proposed specific remedial techniques will of necessity be presented by all parties, including (if they so desire), evidence by petitioners intended to demonstrate the impracticality of any remedy extending beyond the present boundaries of the Detroit school district.

[4] For example, in a report to the district court, petitioner State Superintendent of Public Instruction recommended the exchange of pupils by contract among existing school districts, at least as an interim measure. Plaintiffs supported this recommendation below as a workable method of proceeding to accomplish complete relief from the constitutional violations with as little intrusion as possible into the State's existing internal structures for administering public education. *Compare Bradley* v. *State Bd. of Educ.*, 462 F.2d 1058, 1066-67 (4th Cir. 1972), *aff'd by an equally divided court*, —— U.S. —— (1973).

the absence of a plan, especially when remedial proceedings are underway below, the final outcome is uncertain, and the resolution of issues depends upon the evidentiary contributions both of petitioners and of newly added parties. No substantial harm will be visited upon petitioners should this Court decline review. If after the completion of the proceedings below, any party is still dissatisfied with the final determination and orders, recourse may be had to the Court of Appeals, and if necessary, to this Court. With the benefit of the rulings of the lower courts, this Court could better determine whether any remaining disputed issue presented by the completed record is worthy of review.

CONCLUSION

WHEREFORE, for the foregoing reasons, these respondents Bradley, et al. respectfully pray that the petitions for writs of certiorari be denied.

Respectfully submitted,

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